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U.S. Department of Homeland Security
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Washington, DC 20529



U.S. Citizenship
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Services

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FILE:



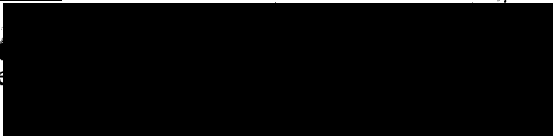
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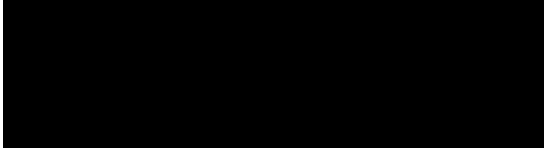
Obligor:
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IMMIGRATION BOND:

Bond Conditioned for the Delivery of an Alien under Section 103 of the
Immigration and Nationality Act, 8 U.S.C. § 1103

ON BEHALF OF OBLIGOR:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Mari Johnson

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The delivery bond in this matter was declared breached by the Field Office Director, Detention and Removal, Boston, Massachusetts, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be rejected.

The record indicates that on September 30, 2002, the obligor posted a \$15,000 bond conditioned for the delivery of the above referenced alien. A Notice to Deliver Alien (Form I-340) dated September 24, 2003, was sent to the obligor via certified mail, return receipt requested. The notice demanded the bonded alien's surrender into the custody of an officer of Immigration and Customs Enforcement (ICE) at 9:00 a.m. on October 22, 2003, at J.F.K. [REDACTED] The obligor failed to present the alien, and the alien failed to appear as required. On November 24, 2003, the field office director informed the obligor that the delivery bond had been breached.

In order to properly file an appeal, the regulation at 8 C.F.R. § 103.3(a)(2)(i) provides that the affected party must file the complete appeal within 30 days after service of the unfavorable decision. If the decision was mailed, the appeal must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b).

The record indicates that the field office director issued the Notice-Immigration Bond Breached on November 24, 2003. It is noted that the field office director properly gave notice to the obligor that it had 33 days to file the appeal. Although counsel dated the appeal December 22, 2003, it was received by ICE on January 12, 2004, or 49 days after the decision was issued. Accordingly, the appeal was untimely filed.

It is noted that counsel asserts that the appeal is timely because the co-obligor received the notice of the bond breach on December 3, 2003, when it was forwarded by the obligor.

Counsel's assertion is without merit as the Form I-323, Notice-Immigration Bond Breached was sent to the co-obligor, and the Form 3811, domestic return receipt indicates the co-obligor signed for the breach on December 1, 2003. The Form I-352 provides that the obligor and co-obligor are jointly and severally liable for the obligations imposed by the bond contract. As such, ICE may pursue a breach of bond against one or both of the contracting parties. It is not obligated to take action against any specific contracting party. *See Restatement (Third) of Suretyship and Guaranty* § 50 (1996).

It is noted that counsel also asserts that the breach notice was not postmarked until November 29, 2003. Counsel, however, provides no evidence to support his argument. The assertion of counsel does not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). Assuming, arguendo, counsel is correct, the appeal would have still been untimely filed.

The regulation at 8 C.F.R. § 103.3(a)(2)(v)(B)(2) states that, if an untimely appeal meets the requirements of a motion to reopen or a motion to reconsider, the appeal must be treated as a motion, and a decision must be made on the merits of the case. The official having jurisdiction over a motion is the official who made the last decision in the proceeding, in this case the field office director. *See* 8 C.F.R. § 103.5(a)(1)(ii). The field office director declined to treat the late appeal as a motion and forwarded the matter to the AAO.

As the appeal was untimely filed, the appeal must be rejected.

ORDER: The appeal is rejected.